

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of New Century Telecom, Inc.  
(U-5912-C) for Approval of Stock Purchase  
Agreement and Related Transfer of Control.

Application 02-10-007  
(Filed October 8, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING DIRECTING THE  
APPLICANT TO FILE AN AMENDMENT TO THE APPLICATION**

New Century Telecom, Inc., ("NCT" or "Applicant") shall file an amendment to Application (A.) 02-10-007 that contains the following information:

1. Has NCT ever failed to timely remit any regulatory fees collected in California (e.g., fees collected for the California High Cost Fund-A, CHCF-B, California Teleconnect Fund, Deaf and Disabled Telecommunications Program, and/or Universal Lifeline Telephone Service)? If so, when and why did this occur?
2. Are there any complaints alleging fraud or significant wrongdoing with respect to Ms. Bartel or NCT that have been decided by, or are currently pending at, the California Public Utilities Commission (Commission), the Federal Communications Commission (FCC), or other state commissions? If so, please identify and describe all such complaints.
3. Has Ms. Bartel, NCT, or any affiliate, officer, partner, or owner of more than 10% of NCT, or any person acting in that capacity whether or not formally appointed, been sanctioned by the Commission, the FCC, or any state regulatory commission for failure to comply with any regulatory statute, rule, or order? If so, please identify and describe all such sanctions.

4. Has Ms. Bartel, NCT, or any affiliate, officer, partner, or owner of more than 10% of NCT, or any person acting in that capacity whether or not formally appointed, been found criminally liable for a violation of Section 17000 et seq., of the California Business and Professions Code or for any actions that involved misrepresentations to consumers? If so, please identify and describe all such violations. Is there currently any investigation for such violations? If so, please describe the investigation(s).
5. Has Ms. Bartel or any current officer, director, partner, or owner of more than 10% of NCT, or any person acting in that capacity whether or not formally appointed, held a similar position with a telecommunications carrier that went bankrupt during their association or tenure? If so, please identify all such occurrences and explain why the Commission should approve A.02-10-007 given the presence of such individuals.
6. A resume for Ms. Bartel showing her previous employers, positions, experience, etc.
7. A.02-10-007 states that Exhibit 2 of the application contains the “profile” of two experts who will assist Ms. Bartel in managing and operating NCT. However, there was no Exhibit 2 appended to A.00-10-007. Please provide a copy of Exhibit 2 or, alternatively, the “profile” of key personnel who currently assist Ms. Bartel in managing and operating NCT.
8. Information that demonstrates Ms. Bartel is financially qualified to assume control of NCT. This information should take at least one of the following forms:
  - A. Recent NCT financial statements that have been audited or reviewed by a CPA. The financial statements should show (i) profitable operations, (ii) positive cash flow, and (iii) assets exceed liabilities by at least \$25,000; or
  - B. Evidence of \$25,000 in liquid assets available to operate NCT. Such evidence should take at least one of the following forms:
    - i Recent bank statement showing at least \$25,000 cash.
    - ii Certificate of deposit for at least \$25,000 or other liquid deposit with a reputable bank or other financial institution.

- iii Letter of credit for at least \$25,000 issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months from the date the amendment required by this ruling is filed.
  - iv Line of credit or other loan for at least \$25,000 issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months from the date the amendment required by this ruling is filed, and payable on a interest-only basis for the same period.
- 9. Whether control of NCT has already been transferred to Ms. Bartel. If the transfer has already occurred:
  - A. The exact date the transfer took place.
  - B. An explanation regarding why the transfer occurred without prior authority from the Commission pursuant to Pub. Util. Code §§ 851 and 854(a).
- 10. Recent Commission decisions have imposed financial penalties for unauthorized transfers of control. (See, for example, Decisions 03-08-058 and 03-05-033). If the transfer of NCT has already occurred, please provide the following information to assist the Commission in determining whether, and to what extent, NCT should be penalized for the unauthorized transfer:
  - A. The amount of the penalty the Commission should levy pursuant to its authority under Pub. Util. Code § 2107 and the criteria in Decision 98-12-075.
  - B. Any other information the Applicant considers relevant to the Commission's determination of what action it should take in response to the Applicant's violation of Section 854(a).
  - C. Whether an evidentiary hearing is needed. If the Applicant requests a hearing, it shall provide a list and description of the factual issues to be addressed at the hearing.
- 11. Which of the following courses of action would be acceptable to the Applicant, if any, assuming the assigned Administrative Law Judge prepares a draft decision that authorizes the requested transfer of control and imposes a fine that does not exceed \$5,000:

- A. A reduction of the 30-day comment period on the draft decision pursuant to Pub. Util. Code § 311(g)(2) and, if so, the extent of the reduction.
- B. A waiver of the 30-day comment period pursuant to Section 311(g)(2).

An amendment containing the above information should be filed at the Commission's Docket Office by no later than March 19, 2004. The contents of the amendment should be verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. Questions regarding this ruling may be sent to Administrative Law Judge Kenney via email at [tim@cpuc.ca.gov](mailto:tim@cpuc.ca.gov).

**IT IS RULED** that:

1. On or before March 19, 2004, Applicant shall file and serve an amendment to Application (A.) 02-10-007 that contains the information specified in the body of this ruling.
2. The contents of the amendment shall be verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure.
3. Failure to amend A.02-10-007 by March 19, 2004, may result in a recommended order denying the application.

Dated March 1, 2004, at San Francisco, California.

/s/ TIMOTHY KENNEY

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Timothy Kenney  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Directing the Applicant to File an Amendment to the Application on all parties of record in this proceeding or their attorneys of record.

Dated March 1, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703 2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.